

## **AMENDMENTS TO THE DRAWINGS**

Attached are Replacement Sheets 1-3.

## **REMARKS/ARGUMENTS**

Claims 1-20 are pending in the instant application. Claims 1-20 were rejected as being obvious under 35 U.S.C. 103(a) in view of various references, either alone or in combination. The figures were objected to as lacking reference numbers '10' and '51' and for showing reference number '20'. In response, Figure 2A has been amended to add reference number '51', which was described in the specification as filed. Figures 1, 2, 3, 5, 7 and 8 were amended to change reference number '20' to reference number '10', which was described in the specification as filed.

Replacement sheets of drawings are attached herewith. Claims 1, 2, 7, 9, 11, 13 and 16 have been amended. No new matter has been added to the claims.

Claims 1, 4, 5 and 8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Avery '784. The Office Action stated that member 28 defines the dispenser body which supports the flexible fluid container 14 and noted the elongated tube at 40 with the upper end near the opening of the dispenser body and the mouthpiece at 12.

However, with respect to claim 1, the flexible fluid container 14 is not supported by the bell-shaped member 28 within the interior of the member 28. There is no suggestion or motivation, either explicitly or inherently, in Avery that is provided by the Office Action to support the contention that member 28 is a dispenser body supporting the fluid container. In fact, support clips 44 are explicitly shown to support the bag 10 which is attached to a 'bag supporting brassiere 13', as seen in Figure 1 of Avery. Holding the bag 10 by the bell-shaped member 28 can only result in the bag 10 detaching from the member 28 due to the weight of the bag 10.

In regard to claim 4, there is no evidence to support the contention that the dip tube 40 (the so-called 'flow tube') is approximately the same length as the bag 10. In fact, Figures 2 and 3 of Avery indicates that the dip tube 40 is significantly longer than the bag 10.

With respect to claim 5, there is no evidence provided by the Office Action to support any contention that there is a mouthpiece in fluid flow communication with fluid contained within the flexible fluid container. The so-called mouthpiece '12' of Avery is actually a feeding tube and not a mouthpiece. The feeding tube 12 is disposed within the mouth of while the child's mouth is actually engaging the nipple

(i.e., mouthpiece) from which the child is nursing, as seen in Figure 1 of Avery (col. 2, lines 49-54).

Regarding claim 8, there is no evidence provided by the Office Action to support any contention that the flow tube extends centrally through the dispenser body and the fluid container. As seen in Figure 3 of Avery, the dip tube 40 does not extend centrally through the so-called dispenser body '28', only through the bag 10 and the plug 26.

Therefore, it is respectfully requested that the above rejections to claims 1, 4, 5 and 8 be withdrawn.

Claims 1-5, 8, 9, 16-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Zohe '411. The Office Action noted the flexible fluid container at 4 supported by a dispenser body, the flow tube at 12 which has at least one aperture through the side wall and the mouthpiece at 6, and also the casing at 16 which engages the dispenser body.

However, with respect to claim 1, it is noted that the Office Action did not identify which element the Office Action regards as the dispenser body. If the Office Action had intended to identify the breast portion 2 as the dispenser body, then the Zohe reference fails to disclose that collapsible container 4 is supported by the breast portion 2. There is no suggestion or motivation, either explicitly or inherently, in Zohe that is provided by the Office Action to support this contention.

Additionally, reference number '12' is described in Zohe as being a stiffening strip or rigid straight member. Figures 2, 4, 6 and 7 of Zohe illustrate that reference number '12' is not even a tube, but an open generally U-shaped member. There is no suggestion or motivation provided by the Office Action for regarding this U-shaped open member '12' to be a tube of any sort.

With respect to claim 2, as outlined above, the U-shaped stiffening member 12 is not a flow tube and there are no apertures disclosed in the solid, continuous sidewall forming the U-shape.

In regard to claim 4, as outlined above, the U-shaped stiffening member 12 is not a flow tube and there is no evidence provided by the Office Action to support any contention that the stiffening member 12 is approximately the same length as the container 4. In fact, Figures 2, 4 and 6 of Zohe indicate that the stiffening member 12 is significantly shorter than the container 4.

Regarding claim 5, it is unclear how the Office Action is attempting to support its contention about the dispenser body including a mouthpiece in fluid flow communication with fluid contained within the flexible fluid container since reference number '6' of Zohe refers to rings or beads. The Office Action failed to identify what it considered to be the dispensing body so the relationship to the mouthpiece at '6' is unclear.

In regard to claim 8, as outlined above, the U-shaped stiffening member 12 is not a flow tube and therefore cannot be considered a flow tube extending centrally through the dispenser body and the fluid container.

With respect to claim 9, as outlined above, the U-shaped stiffening member 12 is not a flow tube and there are no apertures disclosed in the solid, continuous sidewall forming the U-shape.

With regard to claim 16, it is noted that the Office Action failed to identify which element the Office Action regards as the dispenser body. If the Office Action had intended to identify the breast portion 2 as the dispenser body, then the Zohe reference fails to disclose that collapsible container 4 is supported by the breast portion 2. There is no suggestion or motivation, either explicitly or inherently, in Zohe that is provided by the Office Action to support this contention. As outlined above, the U-shaped stiffening member 12 is not a flow tube and there are no apertures disclosed in the solid, continuous sidewall forming the U-shape. Therefore, the member 12 cannot be considered a flow tube extending centrally through the dispenser body and the fluid container.

Regarding claim 17, it is unclear how the Office Action is attempting to support its contention about the dispenser body including a mouthpiece in fluid flow communication with fluid contained within the flexible fluid container since reference number '6' of Zohe refers to rings or beads. The Office Action failed to identify what it considered to be the dispensing body so the relationship to the mouthpiece at '6' is unclear.

With regard to claim 18, as outlined above, the U-shaped stiffening member 12 is not a flow tube and there is no evidence provided by the Office Action to support any contention that the stiffening member 12 is approximately the same length as the container 4. In fact, Figures 2, 4 and 6 of Zohe indicate that the stiffening member 12 is significantly shorter than the container 4.

Therefore, it is respectfully requested that the above rejections to claims 1-5, 8, 9, and 16-18 be withdrawn.

Claims 1, 3, 5, 8, 10 and 12 are rejected under 35 USC (a) as unpatentable over Sheu '787. The Office Action noted Figure 4 shows the flexible container 12 with the dispenser body at 4 and flow tube at 5 with an extension at the bottom. Member e defines the mouthpiece while member 3 defines the casing.

However, with regard to claim 1, the so-called container '12' (i.e., cup 1) of Sheu is not a flexible container. There is no evidence, suggestion or motivation, either explicitly or inherently, in Sheu that is provided by the Office Action to support this contention. The so-called dispenser body 4 (i.e., locking socket 4) does not support the cup 1 within the interior of the dispenser body. Again, no evidence, suggestion or motivation provided by the Office Action to support this contention.

Regarding claim 3, the Office Action claims that member 3 defines the casing but reference number 3 of Sheu actually refers to a collar socket, not a casing. Collar socket 3 engages locking socket 4 but does not enclose the cup 1 of Sheu.

With respect to claim 5, the Office Action stated that a "member e" defines the mouthpiece but there is no element identified in Sheu as "member e". The Office Action has failed to particularly point out and distinctly identify which element the Office Action regards as the mouthpiece.

With regard to claim 8, the so-called flow tube 5 of Sheu is an automatic straw which extends off-center through the dispenser body and fluid container rather than centrally through.

Regarding claim 10, the Office Actions fails to identify where a 'planar cap plate' is allegedly disclosed in the reference or how such an element supports the flow tube or even includes an aperture in fluid flow communication with the flow tube.

With respect to claim 12, the Office Actions fails to identify where a 'spacer' on the end of the flow tube is allegedly disclosed in Sheu. Sheu provides little or no detail in explaining the automatic straw 5 or any feature of straw 5 shown in Figure 4 of Sheu. The Office Action must provide evidence to support its contentions, not mere speculation and wishful thinking.

Therefore, it is respectfully requested that the above rejections to claims 1, 3, 5, 8, 10 and 12 be withdrawn.

Claim 6 is rejected over 35 USC 103(a) as being unpatentable over the references as applied to claim 1 and further in view of Franco '359. The Office

Action stated that to have secured portion of the flow tube to the side of the container to retain it in position would have been obvious in view of such teaching by Franco at 16.

However, with respect to claim 6, the references as applied to claim 1 fail to state a prima facie case of obviousness and claim 1 is therefore allowable. Likewise, claim 6, which depends from claim 1, is also allowable.

Without waiver, there is no reason to combine Franco with any of the references applied to claim 1 as Franco teaches away from Avery, Zohe and Sheu since Franco does not use a dispenser body. In fact, to have combined the flow tube of Franco with Avery, Zohe or Sheu would render Avery, Zohe and Sheu unsuitable for their intended purpose. Additionally, the Office Action fails to explain the alleged motivation or suggestion to have combined Franco with Avery, Zohe or Sheu.

Therefore, it is respectfully requested that the above rejections to claim 6 be withdrawn.

Claims 7, 9, 11, 13 and 13-20 are rejected under 35 USC 103(a) as being unpatentable over the references as Applied to claims 6, 8 and 10 above and further in view of Ichikawa '778. The Office Action stated that to have merely provided at least one aperture through a side of the flow tube for ease of dispensing would have been obvious in view of such teaching by Ichikawa at 12.

However, with respect to claims 7, 9, 11, 13 and 13-20, the references as applied to claims 6, 8 and 10 fail to state a prima facie case of obviousness and claims 6, 8 and 10 is therefore allowable. Likewise, claims 7, 9, 11, 13 and 13-20, which depend from claims 6, 8, and 10, are also allowable.

Without waiver, there is no reason to combine Ichikawa with any of the references applied to claims 6, 8 and 10 as Ichikawa teaches away from Avery, Zohe, Sheu and Franco since Ichikawa does not use a dispenser body. In fact, to have combined the flow tube of Ichikawa with Avery, Zohe, or Sheu would render Avery, Zohe and Sheu unsuitable for their intended purpose. Likewise, combining Ichikawa with Franco would have rendered Franco unsuitable for its intended purpose since Franco teaches integrally forming a straw onto a side of a relatively flat container while Ichikawa has a conduit centrally disposed in a decidedly non-flat container. Additionally, the Office Action fails to explain the alleged motivation or suggestion to have combined Ichikawa with Avery, Zohe, Sheu or Franco.

Regarding claims 7, 9, 11, 13 and 16, none of the references disclose a flow tube with a plurality of apertures through a sidewall thereof.

With respect to claims 14 and 17, the Office Action failed to make out a prima facie case of obviousness. There is no evidence provided by the Office Action to support any contention that, with respect to the Avery reference, there is a mouthpiece in fluid flow communication with fluid contained within the flexible fluid container. The so-called mouthpiece '12' of Avery is actually a feeding tube and not a mouthpiece. The feeding tube 12 is disposed within the mouth of while the child's mouth is actually engaging the nipple (i.e., mouthpiece) from which the child is nursing, as seen in Figure 1 of Avery (col. 2, lines 49-54). It is also unclear how the Office Action is attempting to support its contention, with respect to Zohe, about the dispenser body including a mouthpiece in fluid flow communication with fluid contained within the flexible fluid container since reference number '6' of Zohe refers to rings or beads. The Office Action failed to identify what it considered to be the dispensing body of Zohe so the relationship to the mouthpiece at '6' is unclear. The Office Action stated that a "member e" of the Sheu reference defines the mouthpiece but there is no element identified in Sheu as "member e"; the Office Action failing to particularly point out and distinctly identify which element the Office Action regards as the mouthpiece.

With respect to claims 15 and 18, the Office Action failed to make out a prima facie case of obviousness. The Office Action claims that member 3 of Sheu defines the casing but reference number 3 of Sheu actually refers to a collar socket, not a casing. Collar socket 3 engages locking socket 4 but does not enclose the cup 1 of Sheu.

Regarding claim 19, the Office Actions fails to identify where a 'planar cap plate' is allegedly disclosed in the Sheu reference or how such an element supports the flow tube or even includes an aperture in fluid flow communication with the flow tube.

With respect to claim 20, the Office Actions fails to identify where a 'spacer' on the end of the flow tube is allegedly disclosed in Sheu. Sheu provides little or no detail in explaining the automatic straw 5 or any feature of straw 5 shown in Figure 4 of Sheu. The Office Action must provide evidence to support its contentions, not mere speculation and wishful thinking.

Therefore, it is respectfully requested that the above rejections to claims 7, 9, 11, 13 and 13-20 be withdrawn.



### CONCLUSION

A Notice of Allowance is respectfully requested in view of the arguments and amendments outlined above.

Respectfully submitted,

KELLY LOWRY & KELLEY, LLP

A handwritten signature in black ink, appearing to read 'M. J. Spark', is written over the printed name.

Matthew J. Spark  
Registration No. 43,453

MJS:nn  
6320 Canoga Avenue, Suite 1650  
Woodland Hills, California 91367  
(818) 347-7900